

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of Appeal of Invasive
Species/Infested Waters Citation
#130182 Issued to Phanasouk
Vorarath

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for a Prehearing Telephone Conference on July 19, 2012. Administrative Law Judge (ALJ) Richard C. Luis, Conservation Officer Tom Hemker, and Phanasouk Vorarath participated in the Conference. The parties agreed that no formal hearing would be needed and that the ALJ could make a recommendation based on the record created during the Prehearing Telephone Conference. To that end, Officer Hemker and Phanasouk Vorarath both testified under oath. The OAH record closed at the conclusion of the Prehearing Conference.

STATEMENT OF ISSUE

Whether Phanasouk Vorarath violated Minn. Stat. § 84D.10, subd. 4(b), because he was responsible for transportation of a watercraft with the drain plug in place?

The Administrative Law Judge concludes that Phanasouk Vorarath violated Minn. Stat. § 84D.10, subd. 4(b), on May 13, 2012. Accordingly, the Administrative Law Judge **RECOMMENDS** that the Commissioner **AFFIRM** the Citation.

Based on the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Department of Natural Resources (Department, DNR) Conservation Officers are authorized to issue warnings or citations to a person who violates Minn. Stat. § 84D.10, subd. 4(b), by failing to remove plugs from water-related equipment before transporting that equipment.¹

2. On May 13, 2012, Officer Hemker observed a fishing party arrive at "Bass Camp", a private fishing camp off Highway 61, along the Mississippi River in Winona County. The fishing party included a boat that had its drain plug in place during the time it was being transported.²

¹ See Minn. Stat. § 84D.13, subd. 4(4).

² Testimony of Officer Hemker.

3. On May 13, 2012, Officer Hemker issued Citation No. 130182 to Mr. Vorarath. Mr. Vorarath had acknowledged responsibility for transporting the boat after Officer Hemker asked who was responsible for leaving the plug in the boat.³ The Officer recalls that Mr. Vorarath said he was responsible for leaving the plug in the boat, that he had just bought the plug, and left it in because he wanted to try it.⁴

4. Phanasouk Vorarath timely appealed the Citation.⁵ He believes a warning would have been sufficient. Mr. Vorarath argues that the boat was not his and he had not driven the vehicle that pulled it, so that he was not the proper person to receive the ticket. He alleges he merely handed his driver's license to Officer Hemker when asked. Mr. Vorarath did not raise the defenses noted when Officer Hemker issued him the Citation.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Natural Resources have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 116.072, subd. 6.

2. The Department has substantiated the violation and Citation, and Mr. Vorarath admitted that his fishing party had transported a boat with its drain plug in, as charged in the Citation.

3. It is appropriate that the Commissioner affirm Civil Trespass Citation #130182 and require Mr. Vorarath to pay a \$50 fine for violation of Minn. Stat. § 84D.10, subd. 4(b).

Based on the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Commissioner of Natural Resources **AFFIRM** the Citation issued to Mr. Vorarath on May 13, 2012.

Dated: July 25th, 2012

/s/ Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge

Reported: Recorded Digitally

³ *Id.*

⁴ *Id.*

⁵ Appeal Letter (May 15, 2012).

NOTICE

Pursuant to Minn. Stat. § 116.072, subd. 6 (e), the Commissioner may not issue a final order until at least five days after receipt of the report of the Administrative Law Judge. The persons to whom the order is issued may, within those five days, comment to the Commissioner and the Commissioner will consider the comments. The Commissioner must send a copy of the final decision to Phanasouk Vorarath. The final order of the Commissioner may be appealed pursuant to Minn. Stat. §§ 14.63-14.69. If the Commissioner fails to act within 90 days after the record closes, this recommendation will become the final decision in this matter.

MEMORANDUM

Minnesota law requires that drain plugs be removed or open when transporting a boat in this state.⁶ Mr. Vorarath admits that violation of the drain plug requirement occurred on May 13, 2012. He argues it was inappropriate to ticket him for the violation because he had never driven the vehicle pulling the boat. From that, he contends someone else should have been ticketed. Mr. Vorarath added that the boat was his uncle's, but he called attention to himself because his uncle is not fluent in English.

The ALJ finds that Officer Hemker's testimony to the effect that Mr. Vorarath stated he was the one responsible for the plug's being in to be credible.

Also credible is Officer Hemker's recollection that Mr. Vorarath did not raise the defenses advanced at the Hearing at the time he was ticketed, a statement not challenged by Mr. Vorarath.

After weighing the evidence, the ALJ recommends that Citation #130182 be affirmed.

R. C. L.

⁶ See Minn. Stat. § 84D.10, Subd. 4(b).